

1 The court then dismissed the claims for intentional and
2 negligent infliction of emotional distress (Doc #42 at 8), and for
3 reasons spelled out in an order filed on April 29, 2005, dismissed
4 the claims against the individual police officers pursuant to FRCP
5 12(b)(5) because plaintiff failed to exercise reasonable diligence
6 in serving the officers. Doc ##60, 76. These orders left only the
7 SFPD and the City as defendants — putting aside any issue whether
8 these are separate entities against which relief may be sought.

9 On September 1, 2005, the SFPD and the City moved for
10 partial summary judgment on plaintiff's 42 USC § 1983 claims under
11 Monell v Dep't of Soc Servs, 436 US 658 (1978), for compensatory
12 and punitive damages, and on his claims for punitive damages under
13 state law. Doc #77. Plaintiff did not file an opposition, but
14 instead on November 14, 2005, filed an ex parte motion to extend
15 the time to respond to the City's motion. Doc #80.

16 For the reasons stated below, the court DENIES
17 plaintiff's motion for an extension of time and GRANTS the City's
18 motion for partial summary judgment. Because no federal claims
19 remain, the court REMANDS this case to San Francisco county
20 superior court.

21 Without providing any specific reasons, plaintiff's
22 counsel, Stanley G Hilton, claims that he "was not aware that the
23 [summary judgment] motion was being heard and so failed by mistake
24 and inadvertence to respond to the motion," and that "[t]he
25 simplest method to remedy this situation is to allow an extension
26 of time to permit counsel for plaintiff to respond to this motion."
27 *Id* at 2.

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1 The court declines to provide an extension. FRCP 6(b)
2 permits the court upon a showing of cause to extend an already-
3 expired deadline "where the failure to act was the result of
4 excusable neglect." But here, Hilton's claim that he was "not
5 aware" of the hearing is not credible, and his failure to act is
6 not excusable. Hilton was present in person at the May 31, 2005,
7 case management conference, which noticed hearing for October 6,
8 2005, on defendants' Monell summary judgment motion. Doc #65. The
9 court clerk e-filed a minute entry for the meeting, thereby
10 notifying Hilton at five e-mail addresses: frog727@aol.com,
11 mscarver@aol.com, loucasloukas@yahoo.com, chaffeej@pacbell.net and
12 stavros3589@aol.com. Doc #82, Ex A at 2-3. Hilton was also
13 notified at the same e-mail addresses when, on September 1, 2005,
14 defendants timely filed their summary judgment motion. Id at 4-5.
15 And when the court continued the hearing date, the clerk filed a
16 notice on September 12, 2005, notifying Hilton again at the same e-
17 mail addresses. Id at 6-7. The court does not believe — and
18 Hilton does not contend — that he failed to receive these e-mails.
19 In fact, in another case filed on August 12, 2005, Hilton elected
20 to receive electronic notices at these same five e-mail addresses.
21 See Arikat et al v Chase Visa et al, C-05-3302 JW.

22 Additionally, this is not the first time in this nearly
23 four-year old case that Hilton has failed to file papers on time or
24 timely request an extension. Nearly five months after the deadline
25 to file an amended complaint had passed, Hilton claimed that he
26 "did not receive notice of the order dated August 13, 2002, of
27 Judge Vernon [sic] Walker that placed a deadline of until September
28 3, 2002, to file an amended complaint." Doc #11. The court

1 extended this deadline, but ordered Hilton to attend a training
2 course on e-filing on or before August 29, 2003, and "to e-file a
3 declaration confirming his attendance." Doc #18. But instead of
4 attending the training course, Hilton filed a paper letter
5 requesting an extension because he claimed he would be unable to
6 attend before the deadline. Doc #19. The record does not indicate
7 whether Hilton ever attended the course.

8 Moreover, Hilton's carelessness has not been confined to
9 this case. In Miller v City and County of San Francisco, C-98-0692
10 WHA, Hilton apparently claimed that although he received the City's
11 motion for judgment on the pleadings, he did not file an opposition
12 because "he did not receive papers in the ordinary course of
13 business and that his office lost or misplaced mail." Doc #82, Ex
14 B. Judge Alsup granted an extension but "ordered [Hilton] to
15 organize his office and the circulation of mail within his office
16 in such a manner that does not interfere with the ordinary course
17 of this case." Id.

18 While sometimes unfortunate, "[i]f an attorney makes a
19 mistake in the course of [his] representation of [his] client, the
20 client must accept the consequences of that mistake." Moran v
21 Burbine, 475 US 412, 462 (1986) (Stevens, J, dissenting). Hilton's
22 failure to oppose the summary judgment motion appears to be but
23 another instance of such unfortunate consequences. Accordingly,
24 the court DENIES plaintiff's motion for an extension of time to
25 file an opposition.

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1 A party moving for summary judgment bears the burden of
2 showing that there is no material factual dispute. Celotex Corp v
3 Catrett, 477 US 317, 322-23 (1986). But when the moving party does
4 not bear the burden of persuasion on an issue at trial, the moving
5 party may discharge its burden of production by demonstrating "that
6 the nonmoving party does not have enough evidence of an essential
7 element [of its claim] to carry its ultimate burden of persuasion
8 at trial." Nissan Fire & Marine Ins Co v Fritz Cos, 210 F3d 1099,
9 1102 (9th Cir 2000).

10 Section 1983 Monell claims require showing that municipal
11 defendants have an official policy or custom causing a
12 constitutional injury. Monell, 436 US at 690. "A plaintiff cannot
13 demonstrate the existence of a municipal policy or custom based
14 solely on a single occurrence of unconstitutional action by a
15 non-policymaking employee." McDade v West, 223 F3d 1135, 1141 (9th
16 Cir 2000). "Instead, it is when [the] execution of a government's
17 policy or custom, whether made by its lawmakers or by those whose
18 edicts or acts may fairly be said to represent official policy,
19 inflicts the injuries that [make] the government as an entity * * *
20 responsible under § 1983." Monell, 436 US at 694.

21 Here, defendants allege that "plaintiff lacks evidence to
22 support his allegation that the San Francisco Police Department had
23 an official policy of stopping, detaining and beating African
24 Americans." Doc #77 at 1. The court agrees. Even if plaintiff
25 could prove that the officers who detained and arrested him did so
26 without cause, hurled racial epithets at him and beat him, he has
27 not provided any evidence that the officers did so pursuant to an
28 official policy or custom of doing any of these things. Because

1 plaintiff has no evidence to support this essential element of his
2 claim, the court GRANTS summary judgment for the SFPD and for the
3 City on plaintiff's § 1983 Monell claim.

4 Moreover, because public entities in California, as a
5 matter of law, cannot be liable for punitive damages on state law
6 claims, Cal Gov Cod § 818, the court GRANTS summary judgment for
7 the SFPD and for the City on plaintiff's claim for punitive
8 damages.

9 Accordingly, the court DENIES plaintiff's motion for an
10 extension of time and GRANTS defendants' motion for partial summary
11 judgment. Because there are no longer any federal claims in this
12 case, the court declines to exercise supplemental jurisdiction over
13 whatever state law claims remain and REMANDS the case to San
14 Francisco county superior court. The clerk is DIRECTED to close
15 the file and TERMINATE all pending motions.

16 Furthermore, in contemplating whether Hilton's actions —
17 or perhaps more accurately his inactions — warranted the attention
18 of the court's committee on professional conduct, the court
19 discovered that Hilton is not listed in the court's attorney roll
20 as a member of the bar of this court. This was surprising as
21 Hilton has appeared numerous times before the undersigned, who has
22 also heard many of his colleagues recount episodes of Hilton
23 appearing before them.

24 Civil L R 11-1 provides that except for attorneys
25 employed or retained by the United States, attorneys appearing pro
26 hac vice and certain certified law students, "only members of the
27 bar of this Court may practice in this Court." And Civil L R 11-8
28 provides:

1 A person who exercises, or pretends to be entitled
2 to exercise, any of the privileges of membership in
3 the bar of this Court, when that person is not
4 entitled to avail themselves of such membership
5 privileges, shall be subject to sanctions or other
6 punishment, including a finding of contempt.

7 Accordingly, Hilton is ORDERED TO SHOW CAUSE in writing by March
8 17, 2006, either (1) that he is a member of the bar of this court
9 or (2) if he is not a member, why he should not be sanctioned and
10 found in contempt of court. No extensions will be forthcoming.

11 IT IS SO ORDERED.

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13 VAUGHN R WALKER

14 United States District Chief Judge
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